

Executive Summary – Enforcement Matter – Case No. 48449

Apple Inc.

RN105366561

Docket No. 2014-0419-EAQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

Riata Vista Office Complex, located on the south side of Parmer Lane between Riata Vista Circle and Tercello Lane, Austin, Travis County

Type of Operation:

Commercial office construction site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: June 20, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$27,000

Amount Deferred for Expedited Settlement: \$5,400

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$21,600

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 17, 2014

Date(s) of NOE(s): March 10, 2014

Executive Summary – Enforcement Matter – Case No. 48449
Apple Inc.
RN105366561
Docket No. 2014-0419-EAQ-E

Violation Information

Failed to obtain approval from the Executive Director prior to initiating additional regulated activities over the Edwards Aquifer Recharge Zone outlined in the Water Pollution Abatement Plan (“WPAP”) and Sewage Collection System Plan (“SCSP”) that was approved on March 19, 2013. Specifically, the Respondent completely cleared the site and installed one temporary above ground storage tank prior to receiving written approval from the TCEQ, as documented during an investigation conducted on January 17, 2014 [30 TEX. ADMIN. CODE §§ 213.2 and 213.4(k), and WPAP and SCSP Nos. 11-13011602 and 11-13011603].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On March 10, 2014, the Respondent obtained approval of Phase Two construction of WPAP and SCSP Nos. 11-13011602 and 11-13011603.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Alejandro Laje, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2547; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: D.J. Whisenhunt, Senior Director, 1 Infinite Loop, M/S 38-3TX, Cupertino, California 95014

Timothy D. Cook, CEO, Apple Inc., 1 Infinite Loop, M/S 38-3TX, Cupertino, California 95014

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ
DATES

Assigned
PCW

17-Mar-2014
19-Mar-2014

Screening

18-Mar-2014

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Apple Inc.
Reg. Ent. Ref. No. RN105366561
Facility/Site Region 11-Austin **Major/Minor Source** Major

CASE INFORMATION

Enf./Case ID No. 48449 **No. of Violations** 1
Docket No. 2014-0419-EAQ-E **Order Type** 1660
Media Program(s) Edwards Aquifer **Government/Non-Profit** No
Multi-Media **Enf. Coordinator** Alejandro Laje
EC's Team Enforcement Team 3

Admin. Penalty \$ Limit Minimum \$0 **Maximum** \$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$30,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0.0% Enhancement **Subtotals 2, 3, & 7** \$0

Notes No adjustment for compliance history.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** -\$3,000

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts \$10
Approx. Cost of Compliance \$1,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$27,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$27,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$27,000

DEFERRAL

20.0%

Reduction

Adjustment -\$5,400

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$21,600

Screening Date 18-Mar-2014

Docket No. 2014-0419-EAQ-E

PCW

Respondent Apple Inc.

Policy Revision 3 (September 2011)

Case ID No. 48449

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105366561

Media [Statute] Edwards Aquifer

Enf. Coordinator Alejandro Laje

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 18-Mar-2014

Docket No. 2014-0419-EAQ-E

PCW

Respondent Apple Inc.

Policy Revision 3 (September 2011)

Case ID No. 48449

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105366561

Media [Statute] Edwards Aquifer

Enf. Coordinator Alejandro Laje

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 213.2 and 213.4(k), and Water Pollution Abatement Plan ("WPAP") and Sewage Collection System Plan ("SCSP") Nos. 11-13011602 and 11-13011603

Violation Description

Failed to obtain approval from the Executive Director prior to initiating additional regulated activities over the Edwards Aquifer Recharge Zone outlined in the WPAP and SCSP that was approved on March 19, 2013. Specifically, the Respondent completely cleared the site and installed one temporary above ground storage tank prior to receiving written approval from the TCEQ, as documented during an investigation conducted on January 17, 2014.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 8

52 Number of violation days

mark only one with an x

daily	
weekly	X
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$30,000

Eight weekly events are recommended from the investigation date (January 17, 2014) to the date approval was obtained (March 10, 2014).

Good Faith Efforts to Comply

10.0% Reduction

\$3,000

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

Phase Two construction was approved by a letter dated March 10, 2014.

Violation Subtotal \$27,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10

Violation Final Penalty Total \$27,000

This violation Final Assessed Penalty (adjusted for limits) \$27,000

Economic Benefit Worksheet

Respondent Apple Inc.

Case ID No. 48449

Reg. Ent. Reference No. RN105366561

Media Edwards Aquifer

Violation No. 1

Percent Interest 5.0
Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$1,000	17-Jan-2014	10-Mar-2014	0.14	\$0	\$9	\$10
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to have a Texas Certified Professional Engineer submit Phase Two construction of WPAP and SCSP Nos. 11-13011602 and 11-13011603. Date required is the date of the investigation and the final date is the date Phase Two construction was approved.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$10

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN603691783, RN105366561, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603691783, Apple Inc.

Classification: UNCLASSIFIED

Rating: -----

Regulated Entity: RN105366561, RIATA VISTA OFFICE COMPLEX

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 3

Repeat Violator: NO

CH Group: 09 - Construction

Location: S SIDE OF PARMER LANE BETWEEN RIATA VISTA CIRCLE AND TERCELLO LANE, AUSTIN, TRAVIS COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

EDWARDS AQUIFER REGISTRATION 11-07092601

EDWARDS AQUIFER REGISTRATION 11-07092601A

EDWARDS AQUIFER REGISTRATION 11-11100401

EDWARDS AQUIFER REGISTRATION 11-11100402

EDWARDS AQUIFER REGISTRATION 11-12082701

EDWARDS AQUIFER REGISTRATION 11-13011602

EDWARDS AQUIFER REGISTRATION 11-13011603

EDWARDS AQUIFER REGISTRATION 11-13041201

STORMWATER PERMIT TXR15XI87

Compliance History Period: September 01, 2008 to August 31, 2013

Rating Year: 2013

Rating Date: 09/01/2013

Date Compliance History Report Prepared: March 18, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 18, 2009 to March 18, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Alejandro Laje

Phone: (512) 239-2547

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
APPLE INC.
RN105366561

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2014-0419-EAQ-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Apple Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a commercial office construction site located on the south side of Parmer Lane between Riata Vista Circle and Tercello Lane, Austin, Travis County, Texas (the "Site").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on March 17, 2014.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Seven Thousand Dollars (\$27,000) is assessed by the Commission in settlement of the violations alleged in Section II

- ("Allegations"). The Respondent has paid Twenty-One Thousand Six Hundred Dollars (\$21,600) of the administrative penalty and Five Thousand Four Hundred Dollars (\$5,400) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
 9. The Executive Director recognizes that on March 10, 2014, the Respondent obtained approval of Phase Two construction of Water Pollution Abatement Plan ("WPAP") and Sewage Collection System Plan ("SCSP") Nos. 11-13011602 and 11-13011603.
 10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain approval from the Executive Director prior to initiating additional regulated activities over the Edwards Aquifer Recharge Zone outlined in the WPAP and SCSP that was approved on March 19, 2013, in violation of 30 TEX. ADMIN. CODE §§ 213.2 and 213.4(k), and WPAP and SCSP Nos. 11-13011602 and 11-13011603. Specifically, the Respondent completely cleared the site and installed one temporary above ground storage tank prior to receiving written approval from the TCEQ, as documented during an investigation conducted on January 17, 2014.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Apple Inc., Docket No. 2014-0419-EAQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

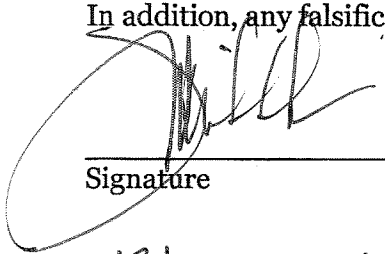
7/23/14
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

4/21/14
Date

DAVID WILSON
Name (Printed or typed)
Authorized Representative of
Apple Inc.

SP. DIRECTOR
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.